

FILED

AUG 10 2005

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION


CLERK

HARVEY R. FIELDS, JR.,

Petitioner,

-vs-

RICARDO MARTINEZ, Warden, Federal
Prison Camp,

Respondent.

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CIV 05-4073

MEMORANDUM OPINION
AND ORDER

Petitioner Harvey Fields, an inmate at the Federal Prison Camp in Yankton, South Dakota, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241. The Respondent has filed an Answer and Return, Doc. 11, claiming that Petitioner has not exhausted all administrative remedies and that the Petition should be dismissed.

In March 2002, Petitioner was sentenced to 60 months' imprisonment for the crime of possession with intent to distribute cocaine. He was eventually incarcerated at the federal prison in Yankton to allow him to participate in the Bureau of Prison's ("BOP") Residential Drug Abuse Program ("RDAP"). He was terminated from the RDAP. Normally inmates who successfully complete RDAP are allowed to serve the last six months of their term of incarceration in a community corrections facility, i.e., in a half-way house. Petitioner, however, is currently scheduled to have 85 days of placement in a community corrections facility. In his Petition, he contends he should be scheduled for placement in a community corrections facility for the last ten percent of his sentence.

Attached to the Petition are four documents relating to Petitioner's use of the BOP's administrative remedy system. He filed a Request for Administrative Remedy with the federal prison in Yankton on March 16, 2005. That request was denied on March 29, 2005. He then filed

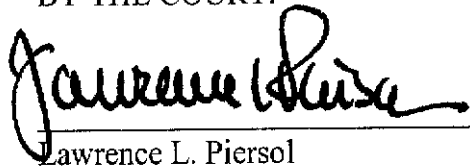
a Regional Administrative Remedy Appeal on April 3, 2005, which was denied on May 3, 2005. The denial of his regional appeal advised Petitioner that, "[i]f you are dissatisfied with this response, you may appeal to the Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. Your appeal must be received in the Office of General Counsel within 30 days from the date of this response." Rather than filing an appeal to the Office of General Counsel, Petitioner filed this action on May 26, 2005.

A federal prisoner is required to exhaust administrative remedies before seeking habeas corpus relief. *See United States v. Chappel*, 208 F.3d 1069, 1069 (8th Cir. 2000). Although Petitioner utilized two of the three available avenues for administrative relief, he did not exhaust all available administrative remedies. Rather than filing an appeal to the Office of General Counsel Petitioner chose to file this habeas petition. The Court will dismiss the current Petition without prejudice, which will afford Petitioner the right, after exhausting his remedies with the BOP, to file a second habeas petition if the BOP does not provide the relief he is seeking. Accordingly,

IT IS ORDERED that Petitioner's Petition for Habeas Corpus Under 28 U.S.C. § 2241, Doc. 1, is denied without prejudice.

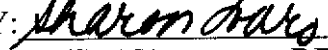
Dated this 10th day of August, 2005.

BY THE COURT:


Lawrence L. Piersol
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK,

BY: 
(SEAL) DEPUTY